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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,126	11/14/2003	James Farrell	4672/310	9585
49664 7590 10/13/2009 BRINKS HOFER GILSON & LIONE / CME P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER				
WEIS, SAMUEL				
ART UNIT		PAPER NUMBER		
3695				
MAIL DATE		DELIVERY MODE		
10/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/713,126

Applicant(s)

FARRELL ET AL

Examiner

SETH WEIS

Art Unit

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This is in response to Applicant's amendment filed 6 July 2009. Claims 18-28 are pending. Claims 18, 27, and 28 have been amended. Claims 18-28 have been examined.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 18-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Duka, U.S. Pat. App. Pub. No. 2005/0075966 (hereinafter, Duka).

As to claim 18, Nieboer discloses a system that mitigates the effects of rises or falls in market prices caused by the execution of a conditional order comprising

(abstract, ¶009):

an order book manager that receives orders (¶032);

an order processor that compares an execution price of a conditional order to a predefined price threshold (¶038, 050, 052; Fig. 3);

a spike control processor that delays the matching of orders received by the order book when an execution price of the conditional order lies outside of the predefined price

threshold, the spike control processor compares an indicative opening price to the predetermined price threshold (§052-53); and an open market processor that opens the market when the indicative opening price lies within the predetermined price threshold wherein the market is reserved when the indicative opening price lies outside of the predetermined price threshold (§041, 052-53).

As to claim 19, Duka discloses wherein the execution price of the conditional order comprises a price range within which the conditional order is satisfied and a trade is executed (§016-17, 38, 41).

As to claim 20, Duka discloses wherein the open market processor is configured to open the market to trading when the indicative opening price lies within the predetermined price threshold or the timed period lapses or a manual intervention occurs (§052)

As to claim 21, Duka discloses wherein the predefined price threshold comprises a no bust range (§054; Fig. 4).

As to claim 22, Duka discloses a memory configured to retain a time parameter used to determine a maximum period of time that a matching of orders may be reserved (§052).

As to claim 23, Duka discloses a matching system coupled to the order book manager (§030-32)

As to claim 24, Duka discloses wherein the order processor is configured to compare an execution price of a conditional order to a predefined price threshold in real time (§018).

As to claim 25, Duka discloses a computer readable medium programmed to mitigate the effect of a market spike caused by the triggering and the election of a conditional order, comprising (abstract, Fig. 1):

monitoring orders submitted to a trading engine in an automated matching system (§030-32);

comparing the price of a conditional order to a predefined price range (§038, 050, 052; Fig. 3);

delaying the matching of orders submitted to the trading engine when an execution price of a stop order lies outside of the predefined price range (§052-53);

deriving an opening price to be used by the trading engine (§041); and

measuring a matching of the orders until the opening price lies within a second predefined price range or a time period lapses (§052-053);

As to claim 26, Duka discloses wherein the measuring code delay the matching of orders until the opening price lies within the second predefined price range or the time period lapses, or a manual intervention occurs (§052-053).

As to claim 27, Duka discloses a signal-bearing medium having software that mitigates the effect of a market spike caused by the triggering and the election of a conditional order, comprising (abstract; Fig. 1):

an evaluation logic that monitors orders submitted to a trading engine in an automated matching system, the evaluation logic being configured to compare an execution price of a conditional order to a predefined price range (§§038, 050, 052; Fig. 3);
a delay logic that delays the matching of the orders submitted to the trading engine when the price of a transaction lies outside of the predefined price range (§§052-053);
a pricing logic that derives an opening price to be used by the trading engine (§§041);
and a timing logic that measures a time interval used to delay a matching of the orders until the opening price is within a predefined price range up to a maximum delay time set by a control center (§§052-053).

As to claim 28, Duka discloses a method of mitigating the effect of a market spike caused by the triggering and the election of a stop order, comprising (abstract, Fig. 1):
monitoring orders submitted to a trading engine in an automated matching system (§§030-032);
comparing the price of a stop order to a predefined price range (§§038, 050, 052; Fig. 3);
delaying the matching of orders submitted to the trading engine when an execution price of a stop order lies outside of the predefined price range (§§052-053, 056);
deriving an opening price to be used by the trading engine (§§041); and
delaying a matching of the orders until the opening price lies within a predefined price range up to a maximum delay time set by a control center (§§052-053, 056).

Response to Arguments

4. Applicant's arguments with respect to claims 18-28 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SETH WEIS whose telephone number is (571)272-1882. The examiner can normally be reached on 8:30 to 5, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on (571) 272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SETH WEIS/

Examiner, Art Unit 3695

/Charles R. Kyle/
Supervisory Patent Examiner, Art Unit 3695